

REMARKS

In response to the Office Action dated June 25, 2008, claims 21 and 24 are currently amended, claims 25-44 are new, and claims 1-20 are cancelled without prejudice, waiver, or disclaimer to the subject matter contained therein. Claims 21 to 44 remain in the application, and Applicant submits that all of those claims are now in condition for allowance. It is not the Applicant's intent to surrender any equivalents because of the amendments or arguments made herein. Reexamination and reconsideration of the application, as amended, are respectfully requested.

REJECTIONS

Non-Art Based Rejections

On page 2, paragraphs 4 and 5, the Office Action indicates a rejection of claim 15 on the basis of 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application, Applicant has cancelled Claim 15 to render the rejection moot.

Art Based Rejections Under 35 U.S.C. §103(a)

The Iliff and Barry References Rejection

On page 2, paragraphs 6-9, of the Office Action Claims 1-12, 21, and 23 were rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over Iliff, United

States Patent Number (USPN) 6,234,964, in view of Barry et al., USPN 6,188,988. The Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application has cancelled Claims 1-12, and amended Claims 21 and 23 to add additional limitations not found in the cited references, to render the rejection moot.

The Iliff, Barry, and Ahmed References Rejection

On page 8, paragraph 10, of the Office Action Claims 13, 14, 16, and 20 were rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over Iliff, in view of Barry, in further view of Ahmed, United States Published Patent Application Number (USPPAN) 2002/0107824. The Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application, Applicant has cancelled Claims 13, 14, 16, and 20 to render the rejection moot.

The Iliff, Barry, Ahmed, Marchosky, Martin, and Kehr References Rejection

On page 10, paragraph 11, of the Office Action, Claim 15 was rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over Iliff, in view of Barry in view of Ahmed in view of Marchosky, USPPAN 2002/0029157, in view of Martin et al., USPPAN 2002/0004725, in further view of Kehr et al., USPPAN 2003/0036683. The Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application, Applicant has cancelled Claim 15 to render the rejection moot.

The Iliff, Barry, and McIlroy References Rejection

On page 12, paragraph 12, of the Office Action, Claim 17 was rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over Iliff, in view of Barry further in view of McIlroy, USPN 5,583,758. The Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application, Applicant has cancelled Claim 15 to render the rejection moot.

The Iliff, Barry, Aquila References Rejection

On page 12, paragraph 13, of the Office Action, Claims 18, 19, 22 and 24 are rejected under 35 U.S.C. §103(a) as being obvious and unpatentable over Iliff, in view of Barry further in view of Aquila et al., USPPAN 2002/0035488. The Applicant respectfully traverses the rejection, but, in order to expedite prosecution of the application, Applicant has cancelled Claims 18 and 19, and has amended Claims 21 (from which Claim 22 depends) and 24 to add additional limitations not found in the cited references, to render the rejection moot.

Discussion of the Cited References

In addition to overcoming the above rejections through cancelling and/or amending the claims, as discussed above, Applicant respectfully submits that the cited references do not read on many of the limitations of the new or amended claims of the application. Further, the cited references also failed to teach the limitations of the claims as originally presented. Finally, Applicant asserts that a person of ordinary skill in the art

would not have combined all the cited references.

In order to establish a prima facie case for obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *In re Kahn*, 441 F.3d 977, 986-987, (Fed. Cir. 2006). The Supreme Court of the United States modified the application of the teaching, suggestion, motivation (TSM) test in *KSR International Co., v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (April 30, 2007), however, the Supreme Court did not change the requirement that the references must teach all of the claim limitations. *See MPEP § 2141.*

The Cited References Fail to Teach or Suggest All the Limitations of the Claims

The claims (as currently amended and as presented originally) of the application include limitations that are not disclosed, taught, or suggested by the cited references. Specifically, the limitations, presented immediately below, are not found in the cited references. This is only a partial list and applicant submits that there are additional limitations in the claims that are not found in the cited references.

♦ The cited references do not teach the limitation in independent Claim 21 of “gathering a consumer self assessment from said consumer, wherein said consumer

directly accesses the health care database to input answers to the first and second series of uniform questions.”

♦ The cited references do not teach the limitations in independent Claims 21 and 25, of “a consumer self assessment score;” or “wherein said consumer self assessment score is a sum of a consumer’s self ratings to each of said series of uniform triage questions and said series of uniform assessment questions.” Page 11 of the Office Action asserts that these or similar limitations are disclosed by Machosky, Figs. 4B-D, items 420, 430, 440, 450-456 and related text. Although Marchosky, Figs. 4B-D and related text, discloses asking the patient two series of questions, assigning a value to the answers given by the patient, and that the assigned values are summed, Marchosky, Figs. 4B-D and related text, fails to disclose that the assigned values are determined by the consumer. In order to be a “self assessment,” it is the consumer that must value the question. Marchosky clearly discloses that the system or the provider is providing the values to the patient’s answers. Indeed, Marchosky, Fig. 4B and 4C, items 424 and 434, specifically indicates that the patient is simply answering “yes or no” to the questions. The patient, or consumer, never assigns a value to the question. On the other hand, the current application claims a “self assessment score.” Thus, Marchosky simply does not disclose these two limitations.

♦ The cited references do not teach the limitation in independent Claims 21 and 25 of “wherein said one or more assessment scores, including said one or more initial assessment scores and one or more post assessment scores, are the average of the sum of: a consumer self assessment score; a provider rating score; a standardized test score; a

learning strategy score; and a subjective assessor factors, that influence treatment, score; is converted to a one hundred point scale.” Page 8 of the Office Action indicates that Iliff, Fig. 9, item 562 and related text, discloses, “is converted to a one hundred point scale,” and Ahmed, paragraph [0072], discloses the rest of the limitation. Although Iliff discloses a 0-10 point system, Iliff utterly fails to disclose, suggest, or teach a “one hundred point scale.” Furthermore, although Ahmed does disclose summing and averaging diagnosis queries, neither a diagnosis query, a diagnosis, or a query is the same as a consumer self assessment score, a provider rating score, a standardized test score, a learning strategy score, or a subjective assessor factors, that influence treatment, score. Thus, this limitation is not disclosed by the cited references.

♦ The cited references do not teach the limitations in independent Claim 24 and dependent Claims 22 and 26 of “assessing the quality of the treatment plans by asking the consumer a series of final uniform questions relating to the progress and satisfaction of the consumer,” and of “asking said consumer a series of uniform quality assurance questions that relate to a satisfaction of said consumer with an outcome of said one or more treatment plans; determining if said consumer was satisfied with said outcome of said one or more treatment plans; wherein said one or more answers to said series of uniform quality assurance questions are utilized to assess a quality and an effectiveness of said one or more treatment plans.” Page 13 of the Office Action asserts that these two limitations are disclosed by Aquila. However, Aquila discloses an insurance data processing system. As such, Aquila does not disclose “questions that relate to a satisfaction of said consumer with an outcome of said one or more treatment plans.”

Indeed, Aquila simply fails to disclose a quality assurance survey that relates to a medical treatment plan. In addition to the fact that these two limitations are not disclosed by Aquila, Applicant, as set forth below, argues that Aquila would not be combined with the other cited references by one skilled in the art.

♦ The cited references do not teach the limitation in independent Claim 24 of “reconciling said consumer’s older records with newly collected information.”

♦ The cited references do not teach the limitation in independent Claims 24 and 25 of “skipping unnecessary” questions from any of the series of questions “using a skip pattern that skips later questions depending on prior answers.”

♦ The cited references do not teach the limitation in independent Claim 25 of “wherein one or more answers to said series of uniform triage questions identifies one or more health related problems said consumer has, and wherein said one or more answers to said series of uniform triage questions identifies one or more functional problems said consumer has.” Specifically, Applicant notes that the cited references are only concerned with identifying health problems, and do not disclose a method that identifies or treats functional problems of the consumer.

♦ The cited references do not teach the limitation in independent Claim 25 of “wherein said assessment process also includes the steps of, identifying the effects of any field restrictions, identifying any concomitant medical conditions, asking said consumer to demonstrate one or more physical abilities related to said health related problems and said one or more functional problems, and identifying any medications said consumer is taking.”

♦ The cited references do not teach the limitation, of dependent Claim 27 of “wherein said demographic data, said answers to said series of uniform triage questions, and said answers to said series of uniform assessment questions are directly entered into said health care database by said consumer.”

♦ The cited references do not teach the limitation in dependent Claim 27 of “wherein said consumer that enters said demographic data, said answers to said series of uniform triage questions, and said answers to said series of uniform assessment questions is blind or partially sighted.”

♦ The cited references do not teach the limitation in dependent Claim 28 of “wherein said provider rating score is a sum of a provider’s rating to a series of provider standardized questions.” Page 11 of the Office Action asserts that Martin, at paragraphs [0068] and [0069], and Tables 6 A-B, disclose this limitation. However, Martin is directed at a guided treatment planning method that is primarily concerned with taking into account risk factors. The provider rating score of the current application is a provider rating of the treatment plan that has been selected. The current application is concerned with treatment plan effectiveness and not “risk factors.” The provider rating analysis disclosed by Martin, if any, is directed at a rating of the “risk factors.” Thus, this limitation is not disclosed by Martin.

♦ The cited references do not teach the limitation in Claim 28 of “wherein said learning strategy score is a sum of a provider determined value in one or more learning strategy areas of visual, visual/tactual/auditory, tactual/auditory, visual/tactual, and tactual.” Page 10 of the Office Action asserts that Ahmed, paragraph [0072] discloses

this limitation. However, Ahmed, paragraph [0072] does not disclose this limitation at all. Instead, Ahmed, paragraph [0072], discloses a combined bias score to help determine a final medical diagnosis. A combined bias score is not the same as a learning strategy score, and visual, tactual, auditory, or any equivalent sense element is not even mentioned by Ahmed.

- ♦ The cited references do not teach the limitation in dependent Claim 32 of “asking said consumer to accept or reject said one or more initial assessment recommendations.”

- ♦ The cited references do not teach the limitation of dependent Claim 36 of “wherein said one or more sets of goals are selected from the group consisting of sighted guide, indoor travel, ability to use emergency exit, orientation skills, stair usage, and local travel.” Page 6 of the Office Action indicates that this limitation is disclosed by Iliff, claims 16 and 50, and Column 5, lines 55-60. Additionally, the Office Action “takes Official Notice that these limitations are a subset of basic health related issues addressed in the medical field and therefore [the above listed limitations] are limitations that are old and well-known in the medical art.” Although Iliff, Column 5, lines 50-60, discloses a disease management system with a major goal of promoting “patient well-being, to educate patients, and to reduce costly medical intervention,” the Iliff system does not disclose the creation of a specific set of goals with the purpose of helping a consumer with functional, as opposed to health related, problems. Furthermore, the Office Action fails to specifically point out, and Applicant could not find, in the cited references any suggestion or teaching of creating or having goals of improving the social functioning of a health care consumer. Within the context of Iliff, promoting well-being is providing

medical services, care, and comfort to the patient; it does not include setting a goal of finding an exit, or use of stairs. Even in an overly broad construction, use of stairs is simply not a goal that is suggested, motivated, or taught by Iliff. Finally, just as Iliff does not contemplate setting social functioning goals, the social functioning goals of the limitation are not “basic health related issues.” At their broadest these limitations are extremely esoteric poor vision health related issues, and at their narrowest, they are obscure social function goals. Thus, the cited references fail to disclose this limitation and this limitation is not a basic health related issue and should not be found obvious in view of the cited references.

♦ The cited references do not teach the limitation in dependent Claim 37 of “wherein said one or more initial assessment scores determine a level of care associated with each of said one or more treatment plans. Page 9 of the Office Action indicates that a similar limitation is taught by Barry, Figs. 5, 6 and related text. However, Barry, Figs. 5 and 6, are charts of how various blood tests relate to one another. Moreover, Barry, Figs. 5 and 6, discloses tests that are used to aid in a diagnosis. Barry simply does not disclose taking an initial assessment score and determining a level of care required by treatment plans.

♦ Finally, the cited references do not teach the limitation in dependent Claim 41 of “wherein said one or more intervention recommendations are selected from the group consisting of psychotherapy, adjustment to vision losses, computer training, employment services, help with living independently, social service, help with improving mobility, and help with low or poor vision.” Page 5 of the Office Action asserts that this limitation

is disclosed by Iliff, Fig.1, items 92-124 and related text. However, the types of intervention recommendations disclosed in Illiff and the other cited references do not cover anything, or anything similar, in the above list. Instead, the cited references are centered only on medical treatments and improving medical conditions through the medical arts. The cited references do not disclose improving the social skills of a consumer. The current application takes into account social skills particularly because loss of vision, unlike many other medical conditions, must be treated with a multi-faceted approach, which includes both medical treatment and social skill development. The cited references are concerned with general medical diagnosis and treatment. It is this generality that makes the cited references completely unsuitable for use with vision problems. Moreover, although a vision related problem may be a medical problem, the cited references fail to specifically mention that the systems and methods they disclose would be suitable for vision problems. Because the cited references fail to indicate that the systems and methods they disclose could be used in relation to vision problems, and because the systems and methods they disclose are unsuitable to treat, or even diagnose, vision problems, the limitation of the current application would not be obvious to one of ordinary skill in the art.

A Person of Ordinary Skill in the Art Would Not Have Combined the Cited References

A person of ordinary skill in the art would not have combined the cited references. Specifically, Applicant submits that Aquila would not be combined by a person of ordinary skill in the art with Barry and Iliff. Page 12 of the Office Action

combines Aquila with Barry and Iliff to obviate the “quality assurance” limitations of the claims of the application. Aquila discloses insurance claims processing systems. On the other hand, Barry and Iliff disclose methods of disease management or treatment. Thus, Aquila is not analogous art with Barry and Iliff. Additionally, the three cited references themselves offer no motivation, teaching or suggestion to combine Aquila with Barry or Iliff. Indeed, the only connection between Aquila and Barry and Iliff is that medical bills may lead to a claim against a health insurance provider. However, this is a tenuous connection at best and would not be enough motivation to combine Aquila with Barry and Iliff. Therefore, a person of ordinary skill in the art would not likely be motivated to combine Aquila with Barry and Iliff.

Conclusion

Thus, because the cited references fail to teach all the limitations of the claims, and because Aquila should not be combined with the other cited references, Claims 21-44 are patentable over the cited references.